

APPEAL NO. 033168  
FILED JANUARY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 30, 2003. The hearing officer determined that respondent (claimant herein) is entitled to supplemental income benefits (SIBs) for the 20th quarter. Appellant self-insured (carrier herein) appeals the determinations that claimant had no ability to work and also that claimant satisfactorily participated in a full-time program sponsored by the Texas Rehabilitation Commission (TRC). Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm in part and reverse and render in part.

Carrier contends the hearing officer erred in determining that claimant had no ability to work during the qualifying period in question. We agree. Claimant testified that she was able to attend graduate level classes during the qualifying period. Although claimant had a narrative report from her doctor, the narrative did not adequately explain why claimant could attend classes, yet could not do any work at all. See Texas Workers' Compensation Commission Appeal No. 990635, decided May 11, 1999. We conclude that the hearing officer's determination that claimant had no ability to work during the qualifying period is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We reverse the hearing officer's determination that claimant was not able to work due to failed back syndrome. However, despite our reversal of this determination, claimant is still entitled to SIBs. This is because the hearing officer could and did find that claimant was enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

Carrier asserts that claimant was not in a full-time program because she was not going to school full time. However, claimant had already graduated from college in May 2002. The Individualized Plan of Employment in evidence said that from May 30, 2002, to May 30, 2003, she would receive job placement services from the TRC. The qualifying period was from April 3 to July 2, 2003. Claimant testified that she had already graduated from college and was in graduate school during the qualifying period, though graduate school was not paid for by the TRC. She said she remained in contact with the TRC and that the TRC continued to help her with job placement. A letter from the TRC said claimant is an active client, that the TRC plans to help claimant pay for certain fees having to do with licensure, that it provided software to help her study for board exams, and that claimant is currently receiving services. Claimant said that she had done everything the TRC asked her to do. Considering what Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(8) (Rule 130.101(8)) says, we conclude that the hearing officer could find that claimant participated in a full-time program sponsored by

the TRC during the qualifying period. We conclude that the hearing officer's determinations in this regard are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We reverse that part of the hearing officer's decision and order that determined that claimant was unable to work during the qualifying period and render a decision that claimant had some ability to work during the qualifying period. We affirm that part of the hearing officer's decision and order that determined that claimant was enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period and that claimant is entitled to SIBs.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge